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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA (OAKLAND)

MARIA KARLA TERRAZA, individually and on
behalf of the SAFEWAY 401(k) Plan,

Plaintiff,

vs.

SAFEWAY INC., et al.,

Defendants.

Related Cases:

No. 3:16-cv-03994-JST

No. 3:16-cv-04903-JST

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Judge: Hon. Jon Tigar

PRELIMINARY APPROVAL ORDER

- (1) GRANTING PRELIMINARY CERTIFICATION OF THE CLASS;**
- (2) GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT;**
- (3) APPOINTING A SETTLEMENT ADMINISTRATOR;**
- (4) ENJOINING CLASS MEMBERS FROM PURSUING ANY CLAIMS THAT
ARISE OUT OF OR RELATE IN ANY WAY TO THE RELEASED
CLAIMS PENDING FINAL APPROVAL OF THE SETTLEMENT;**
- (5) DIRECTING NOTICE TO CLASS MEMBERS AND APPROVING THE
FORM AND MANNER OF NOTICE;**
- (6) APPROVING THE PLAN OF ALLOCATION;**
- (7) SCHEDULING A FINAL APPROVAL HEARING; AND**
- (8) SCHEDULING A HEARING ON CLASS COUNSEL’S FEE AND EXPENSE
APPLICATION AND PLAINTIFFS’ REQUEST FOR CASE CONTRIBUTION
AWARDS.**

The Court, having received and considered the Unopposed Motion for a Preliminary Approval Order (the “Motion”) by Plaintiff Maria Karla Terraza and Class Representative Dennis M. Lorenz (collectively, “Plaintiffs”) in *Maria Karla Terraza v. Safeway Inc., et al.*, N.D. Cal. Case No. 3:16-cv-03994-JST (with Lorenz having also maintained the related action, *Dennis Lorenz v. Safeway Inc., et al.*, N.D. Cal. Case No. 3:16-cv-04903-JST) (the “Actions”), and the supporting papers, including the Settlement Agreement and Release dated September 13, 2019 and all exhibits thereto (the “Agreement”), and the declarations of counsel, having further considered the arguments of counsel and the pleadings and record in this case, and finding good cause for granting the Motion,

HEREBY ORDERS AS FOLLOWS:

1. Capitalized terms not defined in this Order shall have the meaning ascribed to them in Part I of the Agreement.
2. This Court has jurisdiction to consider the Motion and the relief requested therein under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).
3. Venue before the Court is proper pursuant to 29 U.S.C. § 1132(e)(2).

1 4. The Court finds, on a preliminary basis and for the purposes of settlement only,
2 that the requirements for certification under Rule 23(a) and Rule 23(b)(1) are satisfied:

3 a) The Settlement Class meets the numerosity requirement of Rule 23(a)(1),
4 as it consists of over 35,000 Class Members.

5 b) The Class Representatives have asserted claims that have at least one
6 common question of law or fact to the Class and relate to the management of the Plan as a
7 whole.

8 c) The Class Representatives are a current and a former participant in the
9 Plan and are typical of other Class Members.

10 d) The Class Representatives have no conflicts with other Class Members,
11 are adequate to represent the Settlement Class, and have retained experienced and qualified
12 counsel to represent the Class as Class Counsel.

13 5. Class certification is appropriate under Rule 23(b)(1) because the Class
14 Representatives assert claims on behalf of the Plan as a whole, and prosecution of separate
15 actions by individual class members would create a risk of inconsistent or varying adjudications
16 with respect to individual class members that would establish incompatible standards of conduct
17 for Defendants and would be dispositive of the interests of other class members as a practical
18 matter or would substantially impair or impede their ability to protect their interests.

19 a) The Court appoints Shepherd, Finkelman, Miller & Shah, LLP as Lead
20 Counsel and the following firms as Class Counsel: Olivier Schreiber & Chao LLP; the Law
21 Offices of Sahag Majarian; and Schneider, Wallace, Cottrell, Konecky, Wotkins LLP, and
22 appoints Maria Terraza, the Named Plaintiff, and Dennis Lorenz as the Class Representatives.

23 b) The non-opt out Class will be preliminarily certified for settlement
24 purposes only, under the terms of the Agreement. The Settlement Class is defined as: all
25 Participants, Former Participants, Beneficiaries, and Alternate Payees in the Plan at any time on
26 or after July 14, 2010 through and including July 28, 2016, and the Beneficiaries or Alternate
27 Payees of any such person.

1 c) If the Court does not issue the Final Approval Order and Judgment, then
 2 the certification will be vacated, and Defendants shall not be deemed to have admitted the
 3 propriety of Class certification under any provision of Federal Rule 23.

4 d) The terms set forth in the Agreement are preliminarily approved, subject
 5 to further consideration at the hearing the Court will hold pursuant to Federal Rule of Civil
 6 Procedure 23(e) to determine whether the Settlement should receive final approval by the Court,
 7 as provided for below (the “Final Approval Hearing”). Having considered the terms of the
 8 Settlement and the submissions in support of preliminary approval, the Court determines, in
 9 accordance with Fed. R. Civ. P. 23(e)(1)(B), that it is likely that the Court will be able to grant
 10 final approval of the Settlement under Fed. R. Civ. P. 23(e)(2) following notice and a hearing.
 11 The Agreement therefore is sufficiently within the range of reasonableness to warrant the
 12 preliminary approval of the Agreement, the scheduling of the Final Approval Hearing, and the
 13 mailing of Notice to Class Members, each as provided for in this Order.

14 6. The Court approves the retention by Class Counsel of Strategic Claims
 15 Services as the Settlement Administrator.

16 7. In further aid of the Court’s jurisdiction to review, consider, implement, and
 17 enforce the Settlement, the Court orders that Plaintiffs, all Class Members, and the Plan are
 18 preliminarily enjoined and barred from commencing, prosecuting, or otherwise litigating,
 19 in whole or in part, either directly, individually, representatively, derivatively, or in any
 20 other capacity, whether by complaint, counterclaim, defense, or otherwise, in any local,
 21 state, or federal court, arbitration forum, or in any agency or other authority or forum
 22 wherever located, any contention, allegation, claim, cause of action, matter, lawsuit, or
 23 action (including but not limited to actions pending as of the date of this Order), including,
 24 without limitation, any Unknown Claims, that arises out of or relates in any way to the
 25 Released Claims or the Actions.

26 8. The Court approves the Notice to Class Members in substantially the form
 27 attached as **Exhibit B** to the Agreement. The Court approves the form and content of the
 28 Notice and finds that the proposed Settlement Notices fairly and adequately:

Summarize the claims that are asserted;
 Identify the Settlement Class;
 Describe the terms and effect of the Settlement Agreement,
 including the benefits of the Settlement and the class
 release;
 Provide information regarding who is required to submit a
 Claim Form and the process for doing so;
 Notify the Settlement Class that Class Counsel will seek
 compensation from the Net Settlement Amount for
 Administrative Expenses, Attorneys' Fees and Expenses,
 and Case Contribution Fees;
 Describe how the recipients of the Class Notice may object to the
 Settlement, or any requested Administrative Expenses, Attorneys' Fees
 and Expenses, or Case Contribution Fees; and
 Give notice to the Settlement Class of the time and place of
 the Fairness Hearing, and Class Members' right to appear.

9. The Court finds that the Plan of Allocation proposed by Plaintiffs and Class Counsel for allocating the Settlement Amount to Class Members, as described in **Exhibit C** to the Agreement, is likely to receive final approval and that the agreement is within the range of reasonableness to warrant preliminary approval.

Manner of Giving Notice

10. The Plan shall use reasonable efforts to cause the Plan Recordkeepers to provide to the Settlement Administrator, within thirty (30) calendar days of the entry of this Preliminary Approval Order, the Participant Data, as defined in the Plan of Allocation as described **Exhibit C** to the Agreement (including names and last known addresses and email addresses, if available) sufficient to effectuate the Notice, implement the Plan of Allocation, and distribute the Settlement Fund on the terms provided for in the Agreement. The names and addresses provided to the Settlement Administrator pursuant to this Order shall be used solely for the

1 purpose of providing Notice of this Settlement and distribution of the Settlement Fund, and for
2 no other purpose and shall be treated as “Confidential” under the Protective Order governing
3 the Actions (Case No. 3:16-cv-03994, Dkt. 52; Case No. 3:16-cv-04903, Dkt. 64).

4 11. Within thirty (30) calendar days of the entry of this Order and no later than the
5 first date that the e-mailing or the mailing of the Notice occurs, the Settlement Administrator
6 shall establish a website containing, the Notice, the Agreement and its exhibits, this Order, the
7 Third Amended Complaint, and the Motions for Preliminary Approval and Final Approval
8 (when filed); the Motion for Attorneys’ Fees and Expenses (when filed); any approval order or
9 other Court orders related to the Settlement, any amendments or revisions to these documents,
10 and any other documents or information mutually agreed upon by the Parties.

11 12. Within thirty (30) calendar days of the entry of this Order and no later than the
12 first date that the e-mailing or the mailing of the Notice occurs, the Settlement Administrator
13 shall establish a toll-free telephone number to which Class Members can direct questions about
14 the Settlement.

15 13. Within forty-five (45) calendar days after entry of this Order, or as may be
16 modified by the Court, the Settlement Administrator shall cause copies of the Notice to be sent
17 by first-class mail or electronic mail (if available) to all Class Members through the notice
18 procedure described in the Agreement and shall cause the Summary Notice to be issued via
19 PRNewswire for national distribution.

20 14. Not later than seven (7) business days after sending the Notice to Class
21 Members, the Settlement Administrator shall provide to Class Counsel and to Defendants’
22 Counsel a declaration attesting to compliance with the sending of the Notice, as set forth above.

23 15. The Court finds that the Notice to be provided as set forth in this Order is the
24 best means of providing notice to the Class Members as is practicable under the circumstances
25 and, when completed, shall constitute due and sufficient notice of the Settlement and the Final
26 Approval Hearing to all persons affected by or entitled to participate in the Settlement or the
27 Final Approval Hearing, in full compliance with the requirements of due process and the
28 Federal Rules of Civil Procedure.

16. All reasonable costs incurred by the Settlement Administrator for providing the Notice as well as for administering the Settlement shall be paid as set forth in the Agreement.

Final Approval Hearing

17. The Court will hold the Final Approval Hearing on _____ in Courtroom 9, 19th Floor, of the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building and United States Courthouse, Courtroom 6, 2nd Floor, 1301 Clay Street, Oakland, California 94612, , for the following purposes: (a) to determine whether the non-opt out Class should be certified for settlement purposes only; (b) to determine whether the proposed Settlement on the terms and conditions provided for in the Agreement is fair, reasonable, adequate, and in the best interests of the Class and should be finally approved by the Court; (c) to determine whether Class Counsel's Fee and Expense Application is reasonable and should be approved; (d) to determine whether Plaintiffs' request for Case Contribution Awards is reasonable and should be approved; (e) to determine whether a Final Approval Order and Judgment substantially in the form attached as **Exhibit A** to the Agreement should be entered dismissing with prejudice all Claims; and (f) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Final Approval Hearing shall be given to Class Members as set forth in Paragraph 7 of this Order.

18. The Court may adjourn the Final Approval Hearing and approve the Settlement with such modification as the Parties may agree to, if appropriate, without further notice to the Class.

19. Not later than forty-two (42) calendar days before the Final Approval Hearing, Class Counsel shall submit their papers in support of final approval of the Agreement, and in support of Class Counsel's Fee and Expense Application and Plaintiffs' request for Case Contribution Awards.

20. Not later than thirty (30) calendar days before the Final Approval Hearing, the Independent Fiduciary shall submit its report pursuant to Section 2.9 of the Agreement.

21. Not later than thirty (30) calendar days before the Final Approval Hearing, the Settlement Administrator shall submit its declaration pursuant to Section 2.10 of the Agreement.

Objections to the Settlement

22. The Court will consider written comments and objections to the Settlement, to the proposed Motion for Attorneys' Fees and Expenses, and to Plaintiffs' request for Case Contribution Awards. Any objection to the proposed Settlement must be in writing, and must (a) clearly identify the case name and number (*i.e. Maria Karla Terraza v. Safeway Inc., et al.*, Case No. 3:16-cv-03994), and (b) be submitted to the Court either by mailing it to the Clerk of the Court, United States District Court for the Northern District of California, Ronald V. Dellums Federal Building and United States Courthouse, 1301 Clay Street, Oakland, California 94612, , or by filing it in person at any location of the United States District Court for the Northern District of California. To state a valid objection to the Settlement, an objecting Settlement Class Member must provide the following information in the Settlement Class Member's written objection: (1) his/her/its full name, current address, and current telephone number, and, if represented by counsel, any of his/her/its counsel's name and contact information; (2) whether the objection applies only to the objecting Class Member, to a specific subset of the Class, or to the entire Class; (3) a statement of the position(s) the objector wishes to assert; (4) copies of any other documents that the objector wishes to submit in support of his/her/its position; and (5) a list of any other objections to any class action settlements submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years.

23. Any Class Members' objections must be filed or postmarked on or before twenty-eight (28) calendar days before the Final Approval Hearing. Any objections submitted by federal or state authorities must be filed no later than thirty (30) calendar days before the Final Approval Hearing.

24. Any Class Member who does not timely file and serve a written objection shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Agreement, and any untimely objection shall be barred absent an order from the Court.

Jurisdiction

29. The Court may adjourn or continue the Fairness Hearing without further direct notice to the Class Members other than by notice to Class Counsel and retains jurisdiction to consider all further applications or matters arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

SO ORDERED this _____ day of _____, 2019.

The Honorable Jon S. Tigar
United States District Judge